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IN THE COURT OF APPEALS OF INDIANA

SCOTTIE EDWARDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0702-CR-75
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0102-CF-36584

October 22, 2007

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Scottie Edwards appeals the forty-year sentence he received after his conviction for Attempted Murder,[1] a class A felony. Specifically, Edwards argues that the trial court erred by admitting the victim's prior testimony at the resentencing hearing and that his sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

The facts, as reported in Edwards's prior appeal, are as follows:

> Lynn Ford, the victim of the stabbing in this case, began dating Edwards's ex-wife in January of 2001. In early February of 2001, witnesses saw Edwards sitting in a vehicle in the apartment complex where Ford lived, watching Ford's apartment by using binoculars. One witness also saw Edwards remove mail from Ford's mailbox.
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> On February 11, 2001, Ford returned to his apartment following a date with Edwards's ex-wife. As he walked up the sidewalk, he was confronted by Edwards. Both individuals testified to differing versions of what occurred. Edwards claimed that Ford punched him and that he only stabbed Ford in self-defense. Ford claimed that Edwards lunged at him, knocking him to the ground and then stabbed him several times. Ford was taken to the hospital and treated for stab wounds to the back, arm, side, and back of the head, and for a punctured lung.

Edwards v. State, 773 N.E.2d 360, 362 (Ind. Ct. App. 2002).

Edwards was charged with class A felony attempted murder on February 14, 2001. A two-day jury trial began on June 18, 2001, and Edwards was found guilty as charged. We vacated Edwards's conviction on appeal, concluding that the jury had been improperly

[1] Ind. Code §§ 35-41-5-1, 35-42-1-1.

instructed regarding the requisite mens rea for the crime. Id. at 363-64.

On December 17, 2003, following a second jury trial, Edwards was again found guilty of class A felony attempted murder. The trial court held a sentencing hearing on January 9, 2004, and identified three aggravating and no mitigating factors before sentencing Edwards to forty years imprisonment. On appeal, we concluded that the trial court improperly enhanced Edwards's sentence based on facts not included in the jury's verdict in violation of his right to trial by jury. Edwards v. State, 822 N.E.2d 1106, 1110 (Ind. Ct. App. 2005) (applying Blakely v. Washington, 542 U.S. 296 (2004)). Thus, we remanded the cause to the trial court for resentencing.

On June 13, 2005, the State filed a notice of the aggravating factors it intended to prove at the resentencing hearing. A two-day hearing began on December 11, 2006, and the trial court admitted Ford's testimony from the first jury trial into evidence because Ford had died on February 5, 2002. The jury ultimately found that the State proved nine aggravating factors beyond a reasonable doubt. The trial court sentenced Edwards to forty years imprisonment on January 3, 2007, and Edwards now appeals.

DISCUSSION AND DECISION[2]

[2] Although Edwards is represented by counsel, he filed pro se correspondence with our court on September 24, 2007, criticizing the brief submitted on his behalf and making various arguments regarding the alleged ineffective assistance of his trial counsel. However, once counsel is appointed, a defendant speaks to the court through counsel. Underwood v. State, 722 N.E.2d 828, 832 (Ind. 2000). Thus, it is within a court's discretion to decide whether to respond to pro se correspondence. Id.

Edwards argues that the facts presented in his appellate brief are not a fair and accurate account of the facts because Edwards maintains his innocence and facts presented by his appellate counsel do not communicate that position. However, it is well established that the statement of facts must be presented in a light most favorable to the underlying judgment. Appellate Rule 46(A). Because Edwards was convicted of attempted murder, it was necessary for his appellate counsel to present the facts in a light most favorable to that

I. Ford's Prior Testimony

Edwards argues that the trial court erred when it admitted Ford's prior testimony at the resentencing hearing over Edwards's objection. While Edwards concedes that Ford was unavailable and that he had an opportunity to cross-examine him during the prior testimony, Edwards argues that his motive for that cross-examination was different than his motive at the resentencing hearing. Thus, Edwards argues that Ford's prior testimony does not fall within the hearsay exception delineated by Indiana Evidence Rule 804(b)(1).[3]

In their arguments, Edwards and the State focus solely on whether Ford's prior testimony was inadmissible hearsay. However, both parties fail to note that the Indiana Rules of Evidence, "other than those with respect to privileges, do not apply in . . . [p]roceedings relating to extradition, sentencing, probation, or parole . . . ." Ind. Evidence Rule 101(c) (emphases added). While applying Evidence Rule 101, our Supreme Court specifically held that "the rule against hearsay and the definitions and exceptions with respect thereto [] do not apply in proceedings relating to sentencing, probation, or parole." Cox v. State, 706 N.E.2d 547, 550 (Ind. 1999). Therefore, whether Ford's prior testimony

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conviction. Edwards also attacks his trial counsel's performance at trial. However, this is a direct appeal from Edwards's resentencing hearing. Thus, this is not the proper occasion for claims regarding the ineffective assistance of counsel that Edwards allegedly received at trial.

[3] Evidence Rule 804(b)(1) provides that if a declarant is unavailable,

> (1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(Emphasis added).

constitutes inadmissible hearsay is of no moment, and Edwards's argument fails.

II. Appropriateness

Edwards argues that his forty-year sentence is inappropriate in light of the nature of the offense and his character. The sentencing statute in effect when Edwards committed the underlying offense provided that for a class A felony, a person "shall be imprisoned for a fixed term of thirty (30) years, with not more than twenty (20) years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances." Ind. Code § 35-50-2-4 (2001).

Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." However, sentence review under Appellate Rule 7(B) is deferential to the trial court's decision, Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003), and we refrain from merely substituting our judgment for that of the trial court, Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Here, a jury found nine facts regarding the aggravating nature and circumstances of the underlying crime—(1) Edwards followed Ford when he was with Edwards's ex-wife prior to the commission of the crime, (2) Edwards went to Ford's apartment complex numerous times before the crime, (3) Edwards used binoculars to watch Ford and Ford's apartment, (4) Edwards removed mail from Ford's mailbox on the day of the crime, (5)

Edwards waited at Ford's apartment for him to come home, (6) the severity and location of the injuries to Ford, (7) after the attack, Edwards left Ford, who was bleeding profusely, to die, (8) Edwards did not call an ambulance for Ford, and (9) Edwards attempted to conceal the crime by throwing away the weapon. Tr. p. 504-06. The trial court found Edwards's minimal criminal history and his age—sixty years old—to be mitigating circumstances.

Turning to the nature of the offense, the facts found by the jury show Edwards's calculating behavior before the attack. Edwards followed Ford, watched him with binoculars, removed mail from his mailbox, and waited outside Ford's home for him to return. Edwards ultimately attacked Ford with a knife, stabbing him once in the left temple, once in the back of the head, three times in the mid-back, once on the left arm, once on the left side at the belt line, and once on the upper arm. Id. at 342. Ford suffered a punctured lung and lost six pints of blood as a result of the injuries. Id. at 343. In sum, Edwards's malice aforethought and the gruesome nature and circumstances of the crime do not aid his argument that an enhanced sentence is inappropriate.

Regarding his character, we acknowledge that the trial court noted that Edwards was once a model citizen. However, Edwards allowed his jealousy over his ex-wife's relationship with Ford to cloud his judgment. He attacked Ford without provocation and inflicted life-threatening injuries. This behavior illustrates Edwards's inability to control his emotions and his disregard for the welfare of others. Therefore, we do not find Edwards's character to aid his appropriateness argument.

In sum, the gruesome nature and circumstances of the underlying offense and

Edwards's inability to control his own behavior warrant an enhanced sentence. As the trial court observed before pronouncing the sentence, "the mitigating circumstances that the Court has already identified pale, simply pale in comparison to the . . . nature and circumstances of the crime." Id. at 569. Therefore, we do not find the forty-year sentence to be inappropriate in light of the nature of the offense and Edwards's character.

The judgment of the trial court is affirmed.

SHARPNACK, J., and RILEY, J., concur.